IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1492 OF 2003
IN
INCOME TAX APPEAL (LDG.) NO. 442 OF 2003

The Commissioner of Income-tax. ... Appellant.

V/s.

M/s.Ashburn Investment and
Finance Ltd., Mumbai. ... Respondent.

R.G.Bhat for the appellant.

Ms.Aasifa Khan i/b. S.R.Mody for the respondent.

CORAM : DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.

DATED : 11th June 2007.

P.C. :

. Heard learned counsel for the appellant and learned counsel for the respondent. Perused notice of motion and affidavit filed in support thereof.

2. By this notice of motion, the appellant is seeking condonation of 243 days in filing appeal. The explanation for delay given by the appellant is thus:-

> The delay has occurred as a result of restructuring of the department. In order to streamline the work, the department has undergone major restructuring. The assessees are being identified as per the municipal limits. The case records are accordingly

> transferred from one charge to another and reassigned. It is on account of these reasons that limitation issue was lost sight off. Different officers have to acquaint themselves with new cases received by them under their charge and proceed from there. It is on account of these factors that the delay has occurred.

3. The above is a routine and stereotype reason furnished by the Revenue in almost all the applications for condonation of delay though restructuring of the department has actually taken place in the year 2001 whereas this appeal is filed in the year 2003. The reason given is incorrect rather false to the knowledge of the department. It is for this reason that when the matter came up before this Court on 17th October, 2006, time was granted to file better affidavit. The said order was not complied with. Thereafter this matter again came up before us on four occasions; on each occasion time was granted to the appellant- Revenue to file better affidavit.

4. Despite the matter having been adjourned on several occasions, supplementary affidavit setting out sufficient cause for delay has not been filed. This attitude of the department is being noticed daily in number of cases with no improvement. This Court cannot show more indulgence than what was shown in this case and number of such other cases. Revenue cannot be given any special treatment. All litigants before this Court are to be treated similarly. In

spite of this, we, in our opinion, have given much latitude which the appellant- Revenue failed to encash.

5. In the above circumstances, we are left with no alternative but to dismiss the notice of motion for non-compliance of order and want of sufficient cause in filing the appeal belatedly.

6. In the result, notice of motion stands dismissed. In view of dismissal of notice of motion, appeal papers be consigned to record.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**